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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 003904

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TAGS: [PGOV](#) [PREL](#) [IZ](#)  
SUBJECT: SHIA POLITICIANS NOT ENTHUSIASTIC ABOUT MOVING  
ARTICLE 140 AHEAD

REF: BAGHDAD 3878

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Classified By: Classified By Senior Advisor David Pearce for reasons 1.  
4 (b) and (d).

¶1. (C) Summary: The first step toward resolving complicated Article 140 territorial issues, including Kirkuk, is for Iraq's political leadership to come to agreement on the way forward, according to Council of Representatives (CoR) Foreign Relations Committee Chairman Humam Hamoudi (ISCI bloc leader, Shia). He told Senior Advisor that the Article 140 mechanism was vague and there are many complicated issues underlying it. It will be difficult for the Iraqi political parties to come to an agreement on their own, so facilitation by a third party may be necessary. He saw two avenues of approach -- step-by-step implementation of the constitution or brokering an overall political agreement. Meanwhile, the Prime Minister's Advisor on Tribal Affairs, Dr. Fa'al Niamah Al-Alayawi, urged a delay in considering the issue until Constitutional reform was complete. Senior Advisor observed to both that rising Kurdish-Arab tensions in the north made it destabilizing to prolong the uncertainty over how the issue would be handled, so we should focus on finding a fair, transparent process that could be agreed all parties. End Summary

Hamoudi Encourages U.S. Engagement  
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¶2. (C) Hamoudi told Senior Advisor 11/25 that Article 140 is part of the Iraqi Constitution. ISCI had agreed to support it as part of the Constitution because the party had needed the Kurds to form a government. He originally thought the article must be applied in all of its details, but it has become clear over time that the article's vague language has caused problems. Hamoudi said the process of "normalization" (adjudicating the claims and needs of those forcibly moved in and out of various areas during the Saddam era) is under way.

But with regard to territorial issues, there are questions. For example, with regard to Kirkuk, it is unclear from the language of the article whether it refers to the province or the city. The Presidency Council is supposed to reach collective agreement on proposed boundary changes. But the conduct of a referendum on the matter is a problem because no one has as yet determined the question to be posed in the referendum. Nor has it been settled how and where the referendum will be conducted -- countrywide, or only in Kirkuk province, or Kirkuk city, and/or in disputed territories in Diyala, Salah ad-Din, Ninewa and elsewhere. Furthermore, there is an issue with the article's provision for a census -- should voter registration really be via the 1957 census or via some other mechanism?

¶3. (C) He speculated that the people of Kirkuk province could decide to form their own region, although the Kurdish parties

would probably not accept that solution. Another possibility was that political leaders could agree to changes such as moving the Sunni Arab-dominated district of Hawija to Salah ad-Din province. He noted that there are other political issues, e.g. the Turkmen are a significant component of the Kirkuk city population, but weak politically. Hamoudi concluded that the complications were such that it was hard to see how boundary changes could be worked out at a purely Iraqi level; recourse to a third party may be needed.

¶4. (C) In response to the Senior Advisor's question about the practical steps required from the Iraqi government to achieve consensus on the way forward, Hamoudi urged Senior Advisor to talk to Vice President Hashimi and get the buy-in of the 3 1. But, he cautioned, any decision should be in writing and signed by all parties or else there would be a risk one of them (read: Vice President Hashimi) could claim later he did not agree.

¶5. (C) On ultimate resolution of the issue, Hamoudi said perhaps the entire Article 140 did not need to be implemented, instead a settlement could be worked out that is acceptable to all parties. He felt there were two possible approaches: to call for the strict interpretation of the Constitution (i.e., step-by-step implementation) or to broker an overall equitable solution.

PM Advisor Prefers Constitutional Reform First  
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¶6. (C) According to the Prime Minister's Advisor on Tribal Affairs, Dr. Fa'al Niamah Al-Alayawi (Shia), a political solution in the north required true reform and stopping what he termed the division of Iraq. It was necessary to bridge the mistrust that has built up between the GOI and Iraqis and get the terrorists out of Mosul and Kirkuk. In a November 23 meeting, also attended by Shaykh Mohsin Nayif al Jabar, a

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Sunni tribal advisor to the Prime Minister from Ninewa province, Fa'al asserted to Senior Advisor that the Kurds sought to control certain territories in Mosul, Kirkuk and Diyala in order to achieve their future dreams. "I am not against the Kurdish region," Fa'al asserted; "I am against what they are trying to do within Iraq that is damaging to Iraqi unity."

¶7. (C) Solving Kirkuk now is a political problem, not a technical one, Fa'al said. The Kurds have expanded into Kirkuk and the KRG influence there is greater than that of the provincial council. Fa'al urged that the U.S. listen to ground truth from the locals and pressure the Kurds to delay implementation until after Constitutional reform is completed. We don't mind moving ahead with normalization and compensation, he said, but resolution of Kirkuk's status vis--vis the KRG should be delayed. It is okay to return Kirkuk province to its original boundaries, Fa'al said, echoing Hamoudi's suggestion that Kirkuk province might then vote to become its own region, instead of joining the KRG. But he maintained that Transitional Administrative Law 58, from which Article 140 was derived, is flawed. Constitutional reform should be completed first; the Arabs and Turkmen want Article 140 delayed.

¶8. (C) Senior Advisor noted that Kurdish public opinion was anxious for resolution, yet Arab and Turkmen public opinion felt at a political disadvantage and reluctant to proceed. So while it was difficult to move ahead it was also destabilizing for uncertainty to persist. The issue was reaching agreement on a fair and transparent process.

¶9. (C) Comment: Hamoudi seemed to favor a stepped-up effort to address the issues in moving forward on Article 140, but ticked off a list of complications to make the point that there were many aspects to resolve and the process should not be rushed. When he referred to recourse to a third party, it

was clear he meant not only the possibility of UN facilitation but also active US engagement. Left unsaid in the Foreign Relations Committee chairman's comment about the Turkmen being weak politically was the implication that Turkey retains an active interest in the issue.  
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